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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 835

BROTHERHOOD OF RAILROAD TRAINMEN, *Petitioner*,

v.

CHARLES V. SMITH, and ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN GENERAL COMMITTEE OF ADJUSTMENT FOR THE BALTIMORE AND OHIO RAILROAD and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation, *Respondents*.

REPLY OF PETITIONER TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The respondents' Opposition to the Petition merits, we feel, this brief reply.

1. The respondents do not attempt to deny the existence of a conflict among the Courts of Appeal pointed out at pages 7 to 10 of the Petition.

2. The respondents argue (Opposition, p. 5) that "if the BRT union shop agreement purported to apply to

conductors, it would be clearly invalid in this respect under the Railway Labor Act . . .". No such contention has been made. The petitioner argues only that the agreement applied to Smith. Section 2, Eleventh (c) of the Railway Labor Act (Petition, Appendix C, p. 23a) specifically provides that

> ". . . an employee . . . as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him."

Smith was a member of the craft represented by the BRT "on the effective date of the first agreement applicable to him" (Petition, p. 8). His obligation to remain a member of the BRT could thereafter be relieved only pursuant to the proviso to Section Eleventh (c), by "changing membership from one organization to another organization". This, as we pointed out (Petition, p. 11), he did not do.

3. Respondents argue (Opposition p. 7) that "The issue in this case, unlike that in the *Rychlik* case, does not involve the claim that an alternative union membership prevented the discharge of the individual respondents as trainmen". The addition of the words "as trainmen" is gratuitous. The respondents do assert that the belated acquisition of membership in the ORC was sufficient to cure the undisputed violation of the BRT agreement, and to confer upon Smith an immunity for his default. Manifestly, there will be little respect for union shop agreements if those covered by them are entitled to disregard them, as here, from July 1, 1952 to April 1, 1956, by the simple device of then seeking the shelter of another organi-

zation. Respondents' contention would be equally applicable had Smith joined any organization "national in scope", whether ORC or some other.

4. Respondents make no effort to deny the importance of the question here presented in the administration of the Railway Labor Act, pointed out at pp. 12-14 of the Petition.

Respectfully submitted,

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